



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

February 16, 2010

BY FEDERAL EXPRESS/ELECTRONIC MAIL/FILED ON ECF

Hon. Burton R. Lifland
United States Bankruptcy Judge
For the Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: *SIPC v. Bernard L. Madoff Investment Securities, LLC*,
No. 08-1789 (BRL)

Dear Judge Lifland:

The Securities and Exchange Commission submits this letter in response to the suggestion that your Honor consider incorporating, into your decision on how "net equity" should be determined, a proposal that would allow customers with negative net equity to be paid an advance of up to \$500,000 from the SIPC fund while foregoing any distribution from the fund of customer property. Letter of Helen Davis Chaitman, Phillips Nizer LLP, and Carole Neville, Sonnenschein Nath & Rosenthal LLP, dated February 2, 2010 (Chaitman/Neville Letter).

We recognize that the suggested resolution of the net equity issue in the Chaitman/Neville Letter would provide relief for many customers who will receive limited or no payments in the BLMIS liquidation. Unfortunately, it is not possible to do what the statute does not allow. As the Commission explained in its January 15, 2010, Supplemental Memorandum of Law (pp. 9-10), Section 9(a) of the Securities Investor Protection Act does not allow the separation of distributions from the fund of customer property and payments from the SIPC Fund. In addition, the Chaitman/Neville Letter states that the proposed payment from the SIPC fund would be based upon the amounts on the final account statements. As the Commission explained in its December 11, 2009, Memorandum of Law (pp. 3-4) and its January 15, 2010, Supplemental

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Memorandum of Law (pp. 2-4), net equity cannot be based upon the securities positions shown on the account statements because this method does not satisfy the requirements Section 8(b).

Sincerely yours,

/s/

Katharine B. Gresham
Assistant General Counsel

cc: Helen Davis Chaitman, Esq. (by email)
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